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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/886,881	07/02/1997	JOHN P. ECKSTEIN	PA1220-C2	9371

7590 05/08/2002

MCDERMOTT WILL & EMERY
227 W MONROE STREET
CHICAGO, IL 60606

EXAMINER

TARAZANO, DONALD LAWRENCE

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 05/08/2002

28

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/886,881

Applicant(s)

ECKSTEIN ET AL.

Examiner

D. Lawrence Tarazano

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1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,7,8,10-16,18,35,37,41-49,51 and 98-108 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14,35, 37, 41-47,98-100 and 102-108 is/are rejected.
- 7) ☐ Claim(s) 15,16,18,48,49,51 and 101 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/19/2002 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

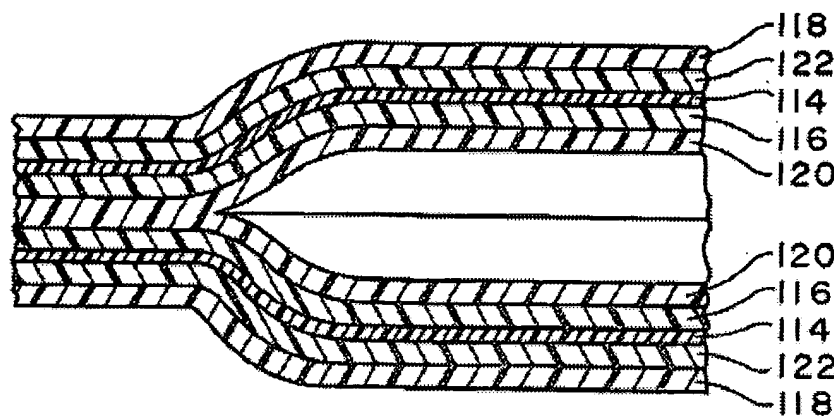
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 7, 8, 10-14, 35, 37, 41-47, 98-100, and 102-108 rejected under 35 U.S.C. 103(a) as being unpatentable over Newsome (4,457,960) in view of Hogdson (5,206,075) and Van der Sanden (A new family of linear ethylene polymer provides enhanced sealing performance).

Newsome teaches multilayer structures used for meat packaging. These structures comprise a barrier layer (114), intermediate layers (122 and 116), and surface layers (118 and 120). The surface and intermediate layers comprise EVA, LLDPE, or blends thereof. (Column 7, lines 48+) and the barrier layer comprises materials such as EVOH. The structure is shown by

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figure 3 below. The structure corresponds to the structure claimed by the applicants. The essential difference between the claimed structure and that taught by Newsome is the specific use of LLDPE made by metallocene catalysis.

**FIG. 3**

Hodgson Jr. teaches polyethylene materials having improved seal properties over EVA. The materials are copolymers of ethylene and a (C_3 - C_{20}) α -olefin, in which butene, hexene and octene are examples), (column 4, lines 39+), and they are made by metallocene catalysis (examples and column 3, lines 14+).

Van der Sanden et al. teach linear ethylene polymers which have improved sealing performance and other desirable properties.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the new generation linear ethylene polymers described in Hodgson Jr. or in Van der Sanden et al. in place of the LLDPE used in Newsome so as to have improved sealing performance. Since the new generation materials are expensive, it would also have been obvious to one having ordinary skill in the art to have used them in blends with EVA,

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to have films, which have some improved sealing properties, but not with the expense of having the entire layer made of the new material.

Regarding the claims directed to copolymers of ethylene and 4-methyl pentene, this is an example of a C₆ alpha olefin and would fall within the C₃-C₂₀ alpha olefin materials taught by Hodgson, Jr. In the absence of unexpected results related to using any particular olefin comonomer, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used any of the alpha-olefins listed since they provide the same function, which is to decrease the density of the ethylene polymer by disrupting the polymer backbone.

Allowable Subject Matter

4. Claims 15, 16, 18, 48, 49, 51, and 101 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The closest prior art, Newsome 4,457,960, fails to teach blends of metallocene catalyzed polyolefin materials with a second polyethylene polymer and there is no motivation to use such blends. They are merely concerned with blends of polyethylene and EVA.

The examiner notes that claim 14 and 47 have been included with the above rejection. This relates to semantics, the examiner takes the position that an EVA material is polyolefin because it contains ethylene groups.

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The examiner asks for clarification on the record regarding the applicants' term "polyolefin" if the applicants intend such materials to be limited to hydrocarbons and they have a different interpretation of the term.

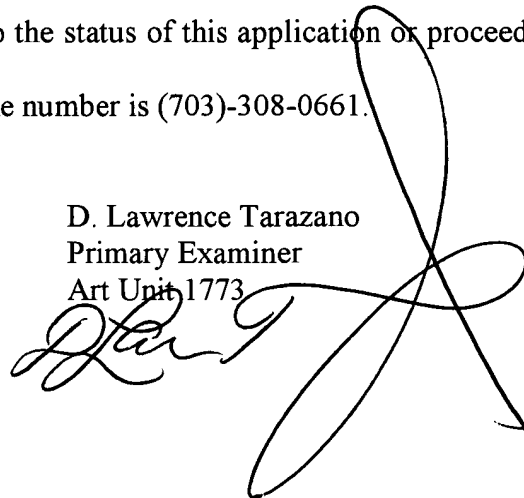
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (703)-308-2379. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on (703)-309-2367. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9310 for regular communications and (703)-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0661.

D. Lawrence Tarazano
Primary Examiner
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A large, stylized handwritten signature in black ink, likely belonging to D. Lawrence Tarazano, is written over the printed name and title.

dlt
May 6, 2002